

BEFORE THE  
UNITED STATES COPYRIGHT ROYALTY JUDGES  
LIBRARY OF CONGRESS  
WASHINGTON, D.C.

*In re*

DETERMINATION OF ROYALTY  
RATES AND TERMS FOR  
EPHEMERAL RECORDING AND  
DIGITAL PERFORMANCE OF SOUND  
RECORDINGS (*WEB IV*)

DOCKET NO. 14-CRB-0001-WR  
(2016-2020)

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SOUNDEXCHANGE'S MOTION TO COMPEL ACCURADIO TO PRODUCE  
FINANCIAL DOCUMENTS

The Judges should enter an order compelling AccuRadio to produce documents responsive to SoundExchange's Request for Production No. 3, which sought financial documents and statements relating to AccuRadio's revenues, expenses, and projections for each year from 2011 to the present.<sup>1</sup> In response to SoundExchange's request for these documents, AccuRadio originally agreed to produce such documents, but simultaneously objected to SoundExchange's request on the basis that such documents are "not 'directly related' to AccuRadio's written direct statement."<sup>2</sup> Subsequently, AccuRadio reneged on its agreement to produce any responsive

<sup>1</sup> SoundExchange requested:

"All documents that concern or relate to AccuRadio's revenues or expenses or projections of revenues or expenses, including, for the years 2011 through the present, all audited and unaudited financial statements, at every level of specificity at which they are created or maintained."

See Olasa Decl., Ex A at 4, SoundExchange's First Set of Requests for Production of Documents to AccuRadio LLC No. 3.

<sup>2</sup> AccuRadio responded as follows:

(footnote continued)

documents and opted instead to stand on its objection. *See* Olasa Decl., Ex. C at 1, E-mail from Jeff Jarmuth to Kuruvilla Olasa (November 17, 2014).

SoundExchange conferred with AccuRadio regarding this document request and certain other matters. Although the parties were able to resolve their disagreements regarding those other matters, they could not come to an agreement regarding SoundExchange's finance-related document request. *See* Olasa Decl., Ex. C at 1, E-mail from Jeff Jarmuth to Kuruvilla Olasa (November 17, 2014).

### **ARGUMENT**

The Judges should overrule AccuRadio's objection that its financial documents are not "directly related" to its Written Direct Testimony. Kurt Hanson, AccuRadio's CEO and sole witness, contends "that there is a dearth of 'willing buyers' in these proceedings." Hanson Written Direct Testimony ("WDT") at 11-14. The reason, according to Mr. Hanson, is that the CRB rates, and even the rates entered into under the Webcaster Settlement Act, have "scared off" most potential webcasters. *Id.* at 13-14. Mr. Hanson estimates that a willing buyer would be "comfortable budgeting for music licensing costs in [the] range [of] . . . about 15% of revenues." *Id.* at 15-16.

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AccuRadio objects to this request to the extent it seeks documents not "directly related" to AccuRadio's written direct statement. Notably, Kurt Hanson's testimony makes no references whatsoever to AccuRadio's financial position, revenues, expenses or any other financial position of AccuRadio. AccuRadio objects to this request because it is oppressive, harassing, overbroad and unduly burdensome. Without waiver and subject to AccuRadio's general and specific objections, AccuRadio will produce responsive, non-privileged documents, if any, directly related to AccuRadio's written direct statement that are located after a reasonable search.

*See* Olasa Decl., Ex. B at 6-7, AccuRadio's Responses and Objections to SoundExchange's First Set of Requests for Production of Documents No. 3.

In addition, Mr. Hanson provides specific testimony regarding webcaster revenues when he testifies that “achievable revenues per listener-hour have in fact proven to date to have been far lower for mobile streams.” *Id.* at 17. Although Mr. Hanson purports to base this claim on Pandora’s financial documents, AccuRadio’s own financial documents are equally related to his claim given that AccuRadio operates a mobile streaming product.

AccuRadio should not be permitted to introduce evidence regarding the interplay between a webcaster’s finances and its ability to pay royalties while simultaneously shielding its own finances and ability to pay. Indeed, one way to test Mr. Hanson’s contentions is to examine AccuRadio’s own financial documents to determine what an actual willing buyer has budgeted for music licensing costs and what that buyer could pay.

Nor can AccuRadio fairly claim that collecting and producing its financial documents are an undue burden. The documents that SoundExchange has requested are documents created and maintained by all companies in the ordinary course of business. AccuRadio, in particular, should likely be able to provide the requested documents with minimal effort. As Mr. Hanson’s own publication, RAIN: Radio and Internet News, reported, AccuRadio recently raised \$2.5 million dollars in funding from investors.<sup>3</sup> It would be very surprising if AccuRadio obtained this investment without first providing its investors with a complete and detailed set of financial statements that show actual and projected revenues and expenses.

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<sup>3</sup> See Olasa Decl., Ex. D, RAIN News, *Kurt Hanson’s AccuRadio raises \$2.5-million funding* (Sep. 5, 2014), available at <http://rainnews.com/kurt-hansons-accuradio-raises-2-5-million-funding/>.

**CONCLUSION**

For the foregoing reasons, SoundExchange requests that the Judges exercise their authority under 17 U.S.C. § 803(b)(6)(C)(v) and 37 C.F.R. § 351.5(b) to compel AccuRadio to produce documents responsive to SoundExchange's Request for Production No. 3.

Dated: December 1, 2014

Respectfully submitted,

By: Glenn D. Pomerantz / *zk*

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Anjan Choudhury (DC Bar 497271)

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Before the  
UNITED STATES COPYRIGHT ROYALTY JUDGES  
Library of Congress  
Washington, D.C.

*In re*

DETERMINATION OF ROYALTY  
RATES AND TERMS FOR  
EPHEMERAL RECORDING AND  
DIGITAL PERFORMANCE OF SOUND  
RECORDINGS (*WEB IV*)

DOCKET NO. 14-CRB-0001-WR  
(2016-2020)

DECLARATION OF KURUVILLA J. OLASA

I, Kuruvilla J. Olasa, declare as follows:

1. I am an attorney with Munger, Tolles & Olson LLP and am counsel for SoundExchange, Inc., in Docket No. 14-CRB-0001-WR (2016-2020).
2. I submit this Declaration in support of SoundExchange's Motion to Compel AccuRadio to Produce Financial Documents.
3. This Declaration is made based upon my personal knowledge.
4. Exhibit A is a copy of SoundExchange's First Set of Requests for Production of Documents to AccuRadio, LLC ("First Set of Requests"). SoundExchange served this First Set of Requests on counsel for AccuRadio on October 13, 2014.
5. Exhibit B is a copy of AccuRadio's Responses and Objections to SoundExchange's First Set of Requests ("Responses and Objections"). SoundExchange received AccuRadio's Responses and Objections on November 7, 2014.
6. Exhibit C is a copy of an e-mail exchange between Jeff Jarmuth and me. Mr. Jarmuth is counsel for AccuRadio in these proceedings.

7. On November 13, 2014, Mr. Jarmuth informed me via e-mail that AccuRadio would not produce any documents responsive to Request for Production ("RFP") No. 3 of SoundExchange's First Set of Requests. See Ex. C at 3. RFP No. 3 sought AccuRadio's financial documents and statements for each year from 2011 to the present. See Ex. A at 4. Mr. Jarmuth took the position that AccuRadio's financial statements are not related to the testimony of its sole witness or to the disposition of this proceeding.

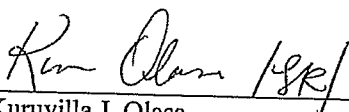
8. Later that day, I responded to Mr. Jarmuth via e-mail and explained why the requested documents should be produced. Ex. C at 2-3.

9. On November 17, 2014, Mr. Jarmuth confirmed that AccuRadio would not produce the requested financial documents or statements. Ex. C at 1.

10. Exhibit D is a printout of the following article: RAIN News, *Kurt Hanson's AccuRadio raises \$2.5-million funding* (Sep. 5, 2014), available at <http://rainnews.com/kurt-hansons-accuradio-raises-2-5-million-funding/>. I obtained this printout from the RAIN News website on November 25, 2014.

Pursuant to 28 U.S.C. § 1746 and 37 C.F.R. § 350.4(e)(1), I hereby declare under the penalty of perjury under the laws of the United States that, to the best of my knowledge, information and belief, the foregoing is true and correct.

Dated: November 26, 2014

  
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*Counsel for SoundExchange, Inc.*

**EXHIBIT A**

Before the  
UNITED STATES COPYRIGHT ROYALTY JUDGES  
Library of Congress  
Washington, D.C.

*In re*

DETERMINATION OF ROYALTY  
RATES AND TERMS FOR  
EPHEMERAL RECORDING AND  
DIGITAL PERFORMANCE OF SOUND  
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DOCKET NO. 14-CRB-0001-WR  
(2016-2020)

**SOUNDEXCHANGE'S FIRST SET OF REQUESTS FOR PRODUCTION OF  
DOCUMENTS TO ACCURADIO, LLC**

Pursuant to 17 U.S.C. § 803(b)(6)(C)(v) and 37 C.F.R. § 351.5(b)(1), SoundExchange, Inc. serves this First Set of Requests for Production of Documents on AccuRadio, LLC. These Requests are continuing in nature and may require supplementation.

**DEFINITIONS AND INSTRUCTIONS**

1. The present tense shall be construed to include the past and future tenses and the past and future tenses shall be construed to include the present tense as required by the context to elicit all information discoverable within the broadest scope of these document requests.
2. The singular shall be construed to include the plural and the plural shall be construed to include the singular as required by the context to elicit all information discoverable within the broadest scope of these document requests.
3. "And" and "or" have both conjunctive and disjunctive meanings as required by the context to elicit all information discoverable within the broadest scope of these document requests.
4. "Any" and "all" shall mean "each and every."

5. The term "documents" shall be construed broadly, consistent with the Federal Rules of Civil Procedure, and includes but is not limited to every writing, recording, photograph, summary, data set, spreadsheet or record in any form, whether handwritten, printed, typed, taped, electronic or in any other graphic, digital, magnetic, optical, or mechanical form, however produced, reproduced, or recorded, and includes electronic documents (such as electronic mail messages and all attachments to electronic mail messages).
6. The term "communication" means the transmittal of information by any means and includes communication of any kind, whether written, oral, electronic, or other.
7. The term "including" is illustrative and not limitative and shall be construed to elicit all information discoverable within the broadest scope of these document requests.
8. The terms "reflecting," "referring," "concerning," "relating to," "related to," and "showing" include: addressing, pertaining to, referring to, concerning, comprising, identifying, stating, consisting of, evidencing, alluding to, responding to, connected with, discussing, showing, describing, reflecting, analyzing, constituting, setting forth, in respect of, incorporating, mentioning, embodying, containing, studying, reporting on, commenting on, considering, recommending, constituting in any way, or having any logical or factual connection with the subject matter.
9. AccuRadio refers to AccuRadio, LLC, its corporate affiliates, parents, subsidiaries, business units, divisions, predecessors, and predecessors of its corporate affiliates, parents, subsidiaries, business units and divisions, and their representatives, officers, agents, servants, counsel, employees, consultants, and any person authorized to act, acting, or purporting to act on their behalf. AccuRadio also includes the witnesses and experts submitting testimony in this proceeding as part of the written direct case of AccuRadio, LLC.

10. "You" and "your" refer to AccuRadio as defined above and/or the witnesses and experts submitting testimony in this proceeding as part of the written direct case of AccuRadio.
11. Please provide separate written responses to all of the following document requests, and repeat each request and the number of each request with each response. If you object to any request, identify the number of the request to which you object, state the basis for your objection in sufficient detail so as to permit adjudication of the validity of the objection, and produce any documents responsive to the portion of the request that you do not find objectionable.
12. Documents sought in these requests include documents currently or previously within your knowledge, possession, or control, as well as those documents which come into your possession subsequent to service hereof. Each of the following document requests is continuing in nature and SoundExchange hereby requests that if you obtain any additional responsive documents at any later date, you promptly so inform SoundExchange and produce those documents.
13. When any request calls for the production of any portion of any document, the entire document containing any such portion must be produced.
14. Unless otherwise indicated in a particular request, this First Request for Production of Documents covers the time period from January 1, 2011 through the present.
15. In accordance with the parties' discovery agreement, please serve written responses and objections and produce any responsive documents for delivery no later than November 7, 2014.
16. Please deliver one set of all responsive documents, responses and objections to Munger, Tolles & Olson at the address below:

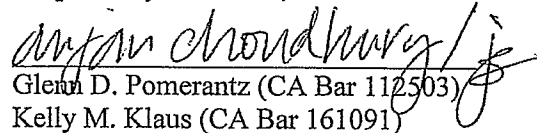
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(213) 683-9107  
Anjan.Choudhury@mto.com

17. Documents offered in response to these requests must be furnished in as organized and usable form as possible. Spreadsheets and other documents should be produced in a manner that makes them readable and intelligible.
18. To the extent documents responsive to a request were submitted as part of your Written Direct Case, or produced as initial disclosures, you do not need to produce them in response to the request if you identify them by exhibit number (or equivalent) in your written response to the request.

#### **DOCUMENT REQUESTS**

1. All documents that concern or relate to the claim that licensing to webcasters at a lower rate would "increase[] consumer enthusiasm for music in a wide variety of genres (which has historically increased sales of both recorded music and attendance at live performances)" as described in paragraph 26 of Kurt Hanson's testimony.
2. All documents that concern or relate to any impact that your service has on sales or licenses of music or on any other method of distributing music, including CDs, downloads, and interactive streaming services.
3. All documents that concern or relate to AccuRadio's revenues or expenses or projections of revenues or expenses, including, for the years 2011 through the present, all audited and unaudited financial statements, at every level of specificity at which they are created or maintained.

Respectfully submitted,



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*Counsel for SoundExchange, Inc.*



### CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on October 13, 2014, I caused a copy of (1) **SOUNDEXCHANGE'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS, RESTRICTED VERSION**, and (2) **SOUNDEXCHANGE'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS, PUBLIC VERSION** to be served by U.S. FIRST CLASS MAIL and EMAIL to the Participants as indicated below:

#### *Participants*

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Rose Leda Ehler

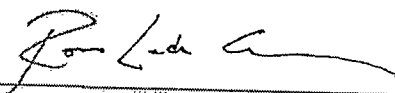
### CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on October 13, 2014, I caused a copy of  
**SOUNDEXCHANGE'S FIRST SET OF REQUESTS FOR PRODUCTION OF  
DOCUMENTS, PUBLIC VERSION** to be served by U.S. FIRST CLASS MAIL and EMAIL  
to the Participants as indicated below:

#### *Participants*

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<p>Christopher Harrison  Pandora Media, Inc.  2101 Webster Street, Suite 1650  Oakland, CA 94612  <a href="mailto:charrison@pandora.com">charrison@pandora.com</a>  Telephone: (510) 858-3049  Facsimile: (510) 451-4286  <i>Pandora Media, Inc.</i></p>	

  
Rose Leda Ehler

**EXHIBIT B**

Before the  
COPYRIGHT ROYALTY JUDGES  
LIBRARY OF CONGRESS  
Washington, D.C.

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<b>In The Matter Of:</b>	)	
	)	
<b>Determination of Royalty Rates</b>	)	<b>14-CRB-0001-WR (2016-2020)</b>
<b>for Digital Performance in Sound</b>	)	
<b>Recordings and Ephemeral</b>	)	
<b>Recordings (Web IV)</b>	)	
<hr/>	)	

**ACCURADIO LLC'S RESPONSES AND OBJECTIONS TO  
SOUNDEXCHANGE'S FIRST SET OF REQUESTS FOR PRODUCTION OF  
DOCUMENTS TO ACCURADIO LLC**

AccuRadio LLC ("AccuRadio") , by its attorneys, hereby responds and objects to SoundExchange's First Set of Requests for Production of Documents to AccuRadio, LLC (the "Requests").

**GENERAL OBJECTIONS**

1. AccuRadio objects to the Requests, including all Definitions and Instructions, to the extent they purport to impose upon AccuRadio requirements that exceed or are inconsistent with 17 U.S.C. § 803(b), 37 C.F.R. §351.5, and any other applicable rule or order governing this proceeding, including prior applicable precedent.
2. AccuRadio objects to the Requests, including all Definitions and Instructions, to the extent they seek documents that are not "directly related" to AccuRadio's written direct statement. See 17 U.S.C. § 803(b)(6)(C)(v), 37 C.F.R. § 351.5(b).
3. AccuRadio objects to the Requests, including all Definitions and Instructions, to the extent they are ambiguous, duplicative, and/or vague.

4. AccuRadio objects to the Requests, including all Definitions and Instructions, to the extent they are oppressive, harassing, overbroad and/or unduly burdensome.

5. AccuRadio objects to the Requests, including all Definitions and Instructions, to the extent they call for information that is already in the possession of the parties propounding these Requests, information that is publicly available and readily accessible, or information already produced in this proceeding. Such requests are overbroad, unduly burdensome, oppressive, and harassing, and would needlessly increase the cost of this proceeding.

6. AccuRadio objects to the Requests, including all Definitions and Instructions, to the extent they seek information or documents protected from discovery under any statute, regulation, agreement, protective order or privilege, including, but not limited to, the attorney-client privilege and work-product immunity doctrine. Any inadvertent disclosure of such information shall not be deemed a waiver of the attorney-client privilege, the attorney work-product immunity doctrine, and any other applicable privilege or doctrine.

7. A statement herein that AccuRadio will produce documents responsive to a Request does not indicate and should not be construed as meaning that AccuRadio agrees, admits or otherwise acknowledges the characterization of fact or law or the factual expressions or assumptions contained in the Request, that the scope of the Request is consistent with the discovery permitted in this proceeding, or that the documents are relevant or admissible.



8. AccuRadio objects to the Requests, including all Definitions and Instructions, to the extent they seek "all" documents of a certain nature, as vague, ambiguous, overbroad and unduly burdensome.

9. AccuRadio objects to the Requests, including all Definitions and Instructions, to the extent they mischaracterize or misquote testimony, or quote or refer to testimony out of context.

10. AccuRadio objects to the Request, including all Definitions and Instructions, to the extent they seek documents in relation to testimony that was based on a Kurt Hanson's knowledge and experience.

11. By agreeing to search for or produce documents responsive to any particular Request, AccuRadio does not represent that such documents exist or that they are in the possession, custody or control of AccuRadio, and entity submitting testimony or a witness, or that all documents responsive to the Request fall within the permissible scope of discovery or will be produced.

12. AccuRadio reserves any and all objections to the use or admissibility in any proceeding of any information, material, documents identified, produced or disclosed in response to the Requests.

13. The responses and objections contained herein are made to the best of AccuRadio's present knowledge, belief and information, and are based on a reasonable and diligent search. AccuRadio reserves the right to amend or supplement its objections and responses based on, among other reasons, its continuing investigation of this matter, further review, or later acquisition of responsive information.

## OBJECTIONS TO DEFINITIONS

AccuRadio objects as follows to the Definitions:

1. AccuRadio objects to the definitions of "and" and "or" and "any" and "all" in Definition Numbers 3 and 4 to the extent they are overbroad, vague, ambiguous and unduly burdensome.
2. AccuRadio objects to the definition of "documents" in Definition Number 5 to the extent it purports to impose obligations beyond the scope of the applicable statute and regulations governing discovery in this proceeding, including 17 U.S.C. § 803(b), 37 C.F.R. § 351.5, and any other applicable rule or order governing this proceeding.
3. AccuRadio objects to the definition of "communication" in Definition Number 6 to the extent that it purports to impose obligations beyond the scope of the applicable statute and regulations governing discovery in this proceeding, including 17 U.S.C. §803(b), 37 C.F.R. §351.5, and any other applicable rule or order governing this proceeding.
4. AccuRadio objects to the definition of "including" in Definition Number 7 to the extent that it purports to impose obligations beyond the scope of the applicable statute and regulations governing discovery in this proceeding, including 17 U.S.C. §803(b), 37 C.F.R. § 351.5, and any other applicable rule or order governing this proceeding.
5. AccuRadio objects to the definitions of "reflecting," "referring," "concerning," "relating to," "related to," and "showing" in Definition Number 8 to the extent they purport to impose obligations to seek information not relevant to a claim or defense of any party in this proceeding.

6. AccuRadio objects to the definitions of "AccuRadio," "AccuRadio, LLC," and "you" and "your" in Definition Numbers 9 and 10 as overbroad, oppressive, harassing and unduly burdensome to the extent they seek to impose any obligation on AccuRadio, or any of its owners, employees, division, agents, representatives, its subsidiaries and affiliates, predecessors, successors, principals, officers, directors, employees, partners, associates, agents and representatives, and other persons acting or purporting to act on its behalf who are not participants in this proceeding and who have not provided witnesses or statements in this proceeding.

#### **RESPONSES AND OBJECTIONS TO DOCUMENT REQUESTS**

1. All documents that concern or relate to the claim that licensing to webcasters at a lower rate "increase [] consumer enthusiasm for music in a wide variety of genres (which has historically increased sales of both recorded music and attendance at live performances)" as described in paragraph 26 of Kurt Hanson's testimony.

**RESPONSE:** AccuRadio objects to this request to the extent it seeks documents not "directly related" to Kurt Hanson's direct written testimony. AccuRadio objects to this request as oppressive, harassing and unduly burdensome. Kurt Hanson's testimony cited in this request relied upon his forty-year-long general extensive knowledge and experience as an entrepreneur and executive in various capacities in both the broadcast and Internet radio industry, including founding and managing the world's oldest surviving personalizable webcaster, AccuRadio, editing a daily web-based trade publication written for the Internet radio industry, RAIN: Radio and Internet News, founding and managing a market research firm serving the North American broadcast radio industry, and consulting and advising many of radio's top executives, programmers and group heads in both the United States and Canada. Without waiver and subject to AccuRadio's general and specific objections, AccuRadio will produce responsive, non-privileged documents,

if any, directly related to AccuRadio's written direct testimony that are located after a reasonable search.

2. All documents that concern or relate to any impact that your service has on sales or licenses of music sales or on any other method of distributing music, including CDs, downloads, and interactive streaming services.

**RESPONSE:** AccuRadio objects to this request to the extent it seeks documents not "directly related" to AccuRadio's written direct statement. AccuRadio objects to this request as oppressive, harassing and unduly burdensome. AccuRadio also objects to this request because the phrase "impact that your service has on sales or licenses of music sales or any other method of distributing music. . ." is ambiguous and vague. AccuRadio also objects to this request to the extent that it is not limited to time periods reasonably related to the matters at issue in this proceeding and that it seeks documents the disclosure of which is prohibited by agreement with a third party not a participant in this proceeding. Without waiver and subject to AccuRadio's general and specific objections, AccuRadio will produce responsive, non-privileged documents, if any, directly related to AccuRadio's written direct statement that are located after a reasonable search.

3. All documents that concern or relate to AccuRadio's revenues or expenses or projections of revenues or expenses, including, for the years 2011 through the present, all audited and unaudited financial statements, at every level of specificity at which they are created or maintained.

**RESPONSE:** AccuRadio objects to this request to the extent it seeks documents not "directly related" to AccuRadio's written direct statement. Notably, Kurt Hanson's testimony makes no references whatsoever to AccuRadio's financial position, revenues, expenses or any other financial position of AccuRadio. AccuRadio objects to this request because it is oppressive, harassing, overbroad and unduly burdensome. Without waiver

and subject to AccuRadio's general and specific objections, AccuRadio will produce responsive, non-privileged documents, if any, directly related to AccuRadio's written direct statement that are located after a reasonable search.

/s/ Jeffrey J. Jarmuth  
Jeffrey J. Jarmuth (IL Bar No. 6193081)  
LAW OFFICES OF JEFFREY JARMUTH  
34 E. Elm Street  
Suite No. 3  
Chicago, IL 60611  
Phone: (312) 335-9933  
Fax: (312) 822-1010  
Email: jeff.jarmuth@jarmuthlawoffices.com

*Counsel for AccuRadio LLC*

Dated: November 7, 2014

# **CERTIFICATE OF SERVICE**

I, Irene C. Tempka, legal assistant to Jeffrey J. Jarmuth, Esq., do hereby certify that copies of the foregoing **"ACCURADIO'S RESPONSES AND OBJECTIONS TO SOUND EXCHANGE'S FIRST SET OF REQUESTS FOR PRODUCTIONS OF DOCUMENTS"** were sent via electronic email to the following parties, all of whom have previously consented to email service, this 7<sup>th</sup> day of November, 2014:

<p>Cynthia Greer Sirius XM Radio Inc. 1500 Eckington Place, N.E. Washington, D.C. 20002 <a href="mailto:cynthia.greer@siriusxm.com">cynthia.greer@siriusxm.com</a> Telephone: (202) 380-1476 Facsimile: (202) 380-4592</p> <p><i>Sirius XM Radio Inc.</i></p>	<p>Patrick Donnelly Sirius XM Radio Inc. 1221 Avenue of the Americas, 36<sup>th</sup> Floor New York, NY 10020 <a href="mailto:patrick.donnelly@siriusxm.com">patrick.donnelly@siriusxm.com</a> Telephone: (212) 584-5100 Facsimile: (212) 584-5200</p> <p><i>Sirius XM Radio Inc.</i></p>
<p>Paul Fakler Arent Fox LLP 1675 Broadway New York, NY 10119 <a href="mailto:paul.fakler@arentfox.com">paul.fakler@arentfox.com</a> Telephone: (212) 484-3900 Facsimile: (212) 484-3990</p> <p><i>Counsel for Sirius XM Radio Inc.</i></p>	<p>Martin Cunniff, Jackson Toof Arent Fox LLP 1717 K Street, N.W. Washington, D.C. 20006 <a href="mailto:Martin.cunniff@arentfox.com">Martin.cunniff@arentfox.com</a> <a href="mailto:Jackson.toof@arentfox.com">Jackson.toof@arentfox.com</a> Telephone: (202) 857-6000 Facsimile: (202) 857-6395</p> <p><i>Counsel for Sirius XM Radio Inc.</i></p>
<p>Mark Hansen, John Thorne, Evan Leo, Kevin Miller, Caitlin Hall, Scott Angstreich, Igor Helman, Leslie Pope, Matthew Huppert Kellogg, Huber, Hansen, Todd, Evans &amp; Figel, P.L.L.C. 1615 M Street, N.W., Suite 400 Washington, D.C. 20036 <a href="mailto:mhansen@khhte.com">mhansen@khhte.com</a>; <a href="mailto:jthorne@khhte.com">jthorne@khhte.com</a> <a href="mailto:eleo@khhte.com">eleo@khhte.com</a>; <a href="mailto:kmiller@khhte.com">kmiller@khhte.com</a>; <a href="mailto:chall@khhte.com">chall@khhte.com</a>, <a href="mailto:sangstreich@khhte.com">sangstreich@khhte.com</a>, <a href="mailto:ihelman@khhte.com">ihelman@khhte.com</a> <a href="mailto:lpope@khhte.com">lpope@khhte.com</a>, <a href="mailto:mhuppert@khhte.com">mhuppert@khhte.com</a> Telephone: (202) 326-7900 Facsimile: (202) 326-7999</p> <p><i>Counsel for iHeartMedia, Inc.</i></p>	<p>Donna Schneider Associate General Counsel iHeartMedia, Inc. 200 E. Base Road San Antonio, TX 78209 <a href="mailto:DonnaSchneider@iheartmedia.com">DonnaSchneider@iheartmedia.com</a> Telephone: (210) 832-3468 Facsimile: (210) 832-3127</p> <p><i>Counsel for iHeartMedia, Inc.</i></p>

<p>David Golden Constantine Cannon LLP 1301 K Street, N.W., Suite 1050 East Washington, D.C. 20005 <a href="mailto:dgolden@constantinecannon.com">dgolden@constantinecannon.com</a> Telephone: (202) 204-3500 Facsimile: (202) 204-3501</p> <p><i>Counsel for College Broadcasters Inc. (CBI)</i></p>	<p>Catherine Gellis P.O. Box 2477 Sausalito, CA 94966 <a href="mailto:cathy@cgcounsel.com">cathy@cgcounsel.com</a> Telephone: (202) 642-2849</p> <p><i>Counsel for College Broadcasters (CBI)</i></p>
	<p>Kenneth Steinthal, Joseph Wetzel King &amp; Spaulding LLP 101 Second Street, Suite 2300 San Francisco, CA 94105 <a href="mailto:ksteinal@kslaw.com">ksteinal@kslaw.com</a> <a href="mailto:jwetzel@kslaw.com">jwetzel@kslaw.com</a> Telephone: (415) 318-1200 Facsimile: (415) 318-130</p> <p><i>Counsel for National Public Radio</i></p>
<p>Lisa Widup Robert Windom David Weiskopf Apple Inc. 1 Infinite Loop Cupertino, CA 95014 <a href="mailto:lwidup@apple.com">lwidup@apple.com</a> <a href="mailto:windom@apple.com">windom@apple.com</a> <a href="mailto:dweiskopf@apple.com">dweiskopf@apple.com</a> Telephone: (408) 974-4800 Facsimile: (408) 974-9105</p> <p><i>Apple Inc.</i></p>	<p>Ari Shohat Digitally Imported Inc. 3457 Ringsby Court, Suite 212 Denver, CO 80216 <a href="mailto:ari@di.fm">ari@di.fm</a> Telephone: (303) 997-2202 Facsimile: (303) 997-1058</p> <p><i>Digitally Imported</i></p>
<p>Kurt Hanson 65 E. Wacker Place, Suite 930 Chicago, IL 60601 <a href="mailto:kurt@accuradio.com">kurt@accuradio.com</a> Telephone: (312) 284-2440 Facsimile: (312) 2842450</p> <p><i>AccuRadio, LLC</i></p>	<p>Lee Knife Digital Media Association (DiMA) 1050 17<sup>th</sup> Street, N.W. Washington, D.C. 20036 <a href="mailto:lknife@digmedia.org">lknife@digmedia.org</a> Telephone: (202) 639-9509 Facsimile: (202) 639-5851</p> <p><i>Digital Media Association</i></p>

<p>Rocklin, CA 95765  <a href="mailto:kblair@kloveair1.com">kblair@kloveair1.com</a>  <a href="mailto:bgantman@kloveair1.com">bgantman@kloveair1.com</a>  Telephone: (916) 251-1600  Facsimile: (916) 251-1731    <i>Educational Media Foundation</i></p>	<p>Kurt Hanson  65 E. Wacker Place, Suite 930  Chicago, IL 60601  <a href="mailto:kurt@accuradio.com">kurt@accuradio.com</a>  Telephone: (312) 284-2440  Facsimile: (312) 2842450    <i>AccuRadio, LLC</i></p>
<p>George Johnson  GEO Music Group  23 Music Square East, Suite 204  Nashville, TN 37203  <a href="mailto:george@georgejohnson.com">george@georgejohnson.com</a>  Telephone: (615) 242-9999    <i>GEO Music Group</i></p>	<p>William Malone  40 Cobbler's Green  205 Main Street  New Canaan, CT 06840  <a href="mailto:malone@ieee.org">malone@ieee.org</a>  Telephone: (203) 966-4770    <i>Intercollegiate Broadcasting System, Inc.  (IBM) and Harvard Radio Broadcasting  Co., Inc.</i></p>
<p>Jane Mago, Esq.  Suzanne Head  National Association of Broadcasters  1771 N Street, N.W.  Washington, D.C. 20036  <a href="mailto:jmago@nab.org">jmago@nab.org</a>  <a href="mailto:shead@nab.org">shead@nab.org</a>  Telephone: (202) 429-5459  Facsimile: (202) 775-3526    <i>National Association of Broadcasters (NAB)</i></p>	<p>Bruce Joseph, Karyn Ablin,  Michael Sturm, Jillian Volkmar  Wiley Rein LLP  1776 K Street, N.W.  Washington, D.C. 20006  <a href="mailto:bjoesph@wileyrein.com">bjoesph@wileyrein.com</a>  <a href="mailto:kablin@wileyrein.com">kablin@wileyrein.com</a>  <a href="mailto:msturm@wileyrein.com">msturm@wileyrein.com</a>  <a href="mailto:jvolkmar@wileyrein.com">jvolkmar@wileyrein.com</a>  Telephone: (202) 719-7000  Facsimile: (202) 719-7049    <i>Counsel for National Association of  Broadcasters</i></p>



<p>Karyn Ablin, Jennifer Elgin  Wiley Rein LLP  1776 K Street, N.W.  Washington, D.C. 20006  <a href="mailto:kablin@wileyrein.com">kablin@wileyrein.com</a>  <a href="mailto:jelgin@wileyrein.com">jelgin@wileyrein.com</a>  Telephone: (202) 719-7000  Facsimile: (202) 719-7049</p> <p><i>Counsel for National Religious Broadcasters  NonCommercial Music License Committee (NRBNMLC)</i></p>	<p>Russ Hauth, Executive Director  Harv Hendrickson, Chairman  3003 Snelling Avenue, North  Saint Paul, MN 55113  <a href="mailto:russh@salem.cc">russh@salem.cc</a>  <a href="mailto:hphendrickson@unwsp.edu">hphendrickson@unwsp.edu</a>  Telephone: (651) 631-5000  Facsimile: (651) 631-5086</p> <p><i>National Religious Broadcasters  NonCommercial  Music License Committee (NRBNMLC)</i></p>
<p>Christopher Harrison  Pandora Media, Inc.  2101 Webster Street, Suite 1650  Oakland, CA 94612  <a href="mailto:charrison@pandora.com">charrison@pandora.com</a>  Telephone: (510) 858-3049  Facsimile: (510) 451-4286</p> <p><i>Pandora Media, Inc.</i></p>	<p>R. Bruce Rich, Todd Larson  Weil, Gotshal &amp; Manges LLP  767 Fifth Avenue  New York, NY 10153  <a href="mailto:r.bruce.rich@weil.com">r.bruce.rich@weil.com</a>  <a href="mailto:todd.larson@weil.com">todd.larson@weil.com</a>  <a href="mailto:sabrina.perelman@weil.com">sabrina.perelman@weil.com</a>  <a href="mailto:jacob.ebin@weil.com">jacob.ebin@weil.com</a>  Telephone: (212) 310-8170  Facsimile: (212) 310-8007</p> <p><i>Counsel for Pandora Media, Inc.</i></p>
<p>Gary Greenstein  Wilson Sonsini Goodrich &amp; Rosati  1700 K Street, N.W., 5<sup>th</sup> Floor  Washington, D.C. 20006  <a href="mailto:ggreenstein@wsgr.com">ggreenstein@wsgr.com</a>  Telephone: (202) 973-8849  Facsimile: (202) 973-8899</p> <p><i>Counsel for Pandora Media, Inc.</i></p>	<p>Christopher Harrison  Pandora Media, Inc.  2101 Webster Street, Suite 1650  Oakland, CA 94612  <a href="mailto:charrison@pandora.com">charrison@pandora.com</a>  Telephone: (510) 858-3049  Facsimile: (510) 451-4286</p> <p><i>Pandora Media, Inc.</i></p>

<p>Glen Pomerantz, Kelly Klaus,  Anjan Choudhury, Melinda LeMoine, Rose  Ehler  Munger, Tolles &amp; Olson LLP  355 S. Grand Avenue, 35<sup>th</sup> Floor  Los Angeles, CA 90071-1560  <a href="mailto:Glenn.Pomerantz@mto.com">Glenn.Pomerantz@mto.com</a>  <a href="mailto:Kelly.Klaus@mto.com">Kelly.Klaus@mto.com</a>  <a href="mailto:Anjan.Choudhury@mto.com">Anjan.Choudhury@mto.com</a>  <a href="mailto:Melinda.LeMoine@mto.com">Melinda.LeMoine@mto.com</a>  <a href="mailto:rose.ehler@mto.com">rose.ehler@mto.com</a>  Telephone: (213) 683-9100  Facsimile: (213) 687-3702  Counsel for <i>SoundExchange, Inc.</i></p>	<p>C. Colin Rushing, Bradley Prendergast  SoundExchange, Inc.  733 10<sup>th</sup> Street, N.W., 10<sup>th</sup> Floor  Washington, D.C. 20001  <a href="mailto:crushing@soundexchange.com">crushing@soundexchange.com</a>  <a href="mailto:bprendergast@soundexchange.com">bprendergast@soundexchange.com</a>    <i>SoundExchange, Inc.</i></p>
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/s/ Irene C. Tempka  
Irene C. Tempka  
Law Offices of Jeffrey J. Jarmuth  
34 E. Elm Street  
Chicago, Illinois 60611-1016  
(312) 335-9933  
[irene.tempka@jarmuthlawoffices.com](mailto:irene.tempka@jarmuthlawoffices.com)

## **EXHIBIT C**

## Olasa, Kuruvilla

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**From:** jeff.jarmuth@jarmuthlawoffices.com  
**Sent:** Monday, November 17, 2014 3:03 PM  
**To:** Olasa, Kuruvilla  
**Cc:** irene.tempka@jarmuthlawoffices.com; Pomerantz, Glenn; LeMoine, Melinda; Choudhury, Anjan; Ruitberg, Lauren  
**Subject:** RE: Web IV - AccuRadio LLC's Objections and Responses to SoundExchange's First Set of Production Requests

Hi Kuru,

Apologies for not getting back to you until now, but I wanted to reconnoiter with my client before I responded with authority to your emails. As for RFP No. 1, I can confirm that AccuRadio LLC has no documents in its custody, protection or control that relate to Kurt Hanson's contention that licensing at lower rates "increases consumer enthusiasm for music in a wide variety of genres (which has historically increased sales of both recorded music and attendance at live performances)." Rather, Kurt is relying on his forty-years of experience and expertise in the radio industry, both in the broadcast and streaming spaces.

I also spoke with AccuRadio's Controller regarding RFP No. 2. The one-page Excel spreadsheet I provided to you on Friday reflects AccuRadio's commissions received through the Amazon Affiliates program related specifically to RFP No. 2. While I appreciate your providing links that lay out the parameters of the Affiliates program, I have advised my client to remain squarely within RFP No. 2, which requests production that "relates to any impact that your service has on *sales or licenses of music or on any other method of distributing music, including CDs, downloads, and interactive streaming services.*" (Emphasis mine.) I believe that commissions AccuRadio receives from Amazon for sales of any goods or services outside of RFP No. 2 is not germane to the CRB's Web IV proceeding. However, if you desire to review the exact type of music sales (e.g., title of CD, artist identity, etc.), I will provide you with that information tomorrow. Additionally, if you can make a plausible argument as to why any additional non-musical sales/commission data is germane to SX specifically and to the Web IV proceeding generally, I shall be happy to entertain it in the interest of full disclosure.

As for request No. 3 regarding audited and unaudited financial data from 2011 to the present, I have advised my client that it is clearly outside of the scope of its direct testimony and is therefore not germane to AccuRadio's participation in the CRB's Web IV proceeding. I do not agree that Kurt's testimony (to the effect that there's a dearth of "willing buyers" who fall outside the four general categories of webcasters he describes as the main participants in the Web IV proceeding) places AccuRadio's "...own finances squarely at issue in this proceeding," nor that Kurt's statement that unspecified "willing buyers" outside the four general categories might be comfortable budgeting for music licensing costs around 15% of revenues does the same. At no place in AccuRadio's testimony is its financial data or the impact of royalty costs on its financial position discussed at all, much less with any specificity or by implication. Thus, I remain convinced that RFP No. 3 remains burdensome, intrusive and unnecessary.

Finally, it is my sincere hope that in the future all participants will limit the Web IV proceeding to substantive issues and keep processes like broadly-drawn document requests to a minimum. I am happy to discuss this issue with you any time today or in the near future that is convenient for you and your team.

Regards,

Jeff Jarmuth  
(312) 335-9933

----- Original Message -----

Subject: RE: Web IV - AccuRadio LLC's Objections and Responses to SoundExchange's First Set of Production Requests  
From: "Olasa, Kuruvilla" <Kuruvilla.Olasa@mto.com>  
Date: Fri, November 14, 2014 7:00 pm  
To: "jeff.jarmuth@jarmuthlawoffices.com"  
<jeff.jarmuth@jarmuthlawoffices.com>  
Cc: "irene.tempka@jarmuthlawoffices.com"  
<irene.tempka@jarmuthlawoffices.com>, "Pomerantz, Glenn"  
<Glenn.Pomerantz@mto.com>, "LeMoine, Melinda" <Melinda.LeMoine@mto.com>,  
"Choudhury, Anjan" <anjan.choudhury@mto.com>, "Ruitberg, Lauren"  
<lauren.ruitberg@mto.com>

Jeff,

I have not yet heard back from you regarding my request for a meet-and-confer call. Nor have I received any response to the issues raised in the below e-mail.

In addition, we received AccuRadio's production this morning, which appears to consist of a single one-page document showing the aggregate annual revenue received from the Amazon Affiliates program. Given AccuRadio's participation in the Amazon Affiliates program, we would expect to see additional documents responsive to SoundExchange's RFP No. 2. For instance, Amazon's own description of the Affiliates program states: "You'll always have access to your earnings and traffic reports through Associates Central. The reports will show you what your visitors are buying, how much they are buying, and what your earnings are for those purchases." See <https://affiliate-program.amazon.com/gp/associates/join/faq.html>. And Amazon's website lists numerous reports available to affiliates, including "earnings report" and "orders report." Such reports are responsive to our request.

Please let me know when you are available on Monday, November 17, 2014 for a meet-and-confer regarding the issues with AccuRadio's document production.

Best regards,  
Kuru

---

**From:** Olasa, Kuruvilla  
**Sent:** Thursday, November 13, 2014 2:12 PM  
**To:** 'jeff.jarmuth@jarmuthlawoffices.com'  
**Cc:** [irene.tempka@jarmuthlawoffices.com](mailto:irene.tempka@jarmuthlawoffices.com); Pomerantz, Glenn; LeMoine, Melinda; Choudhury, Anjan; Ruitberg, Lauren  
**Subject:** RE: Web IV - AccuRadio LLC's Objections and Responses to SoundExchange's First Set of Production Requests

Hi Jeff,

Thank you for getting back to me, and for the clarifications.

Respectfully, I have to say that I am surprised to learn that AccuRadio will not be producing any documents in response to request for production ("RFP") 1 and RFP 3. AccuRadio's responses to those RFPs, dated November 7, 2014, stated that it *would* produce "responsive, non-privileged documents, if any, directly related to AccuRadio's written direct testimony." If no such documents existed, why not simply say so?

In any case, we do not agree that AccuRadio's financial statements, as requested by RFP No. 3, are not directly related to its written direct statement. An entire section of Kurt Hanson's testimony focuses on explaining that there is a "dearth of willing buyers in these proceedings." Hanson WDT at 11-14. In this section, Mr. Hanson makes various claims related to webcasters' ability to pay the CRB and Pureplay rates and the purported financial difficulties facing the industry. In addition, Mr. Hanson testifies that "potential 'Willing Buyers' would be comfortable budgeting for music licensing costs in [the] range [of] . . . about 15% of revenues." Hanson WDT at 15-16. Mr. Hanson's testimony regarding webcaster finances have placed AccuRadio's own finances squarely at issue in this proceeding. Please confirm that you will promptly produce documents responsive to RFP No. 3. In the alternative, please let me know when you are available for a meet-and-confer call. Given the expedited discovery schedule, that call should occur no later than Monday, November 17, 2014.

With respect to RFP No. 1, please confirm that there are no documents in AccuRadio's possession, custody, or control, that relate to Mr. Hanson's claim that licensing to webcasters at a lower rate "increase[s] consumer enthusiasm for music in a wide variety of genres (which has historically increased sales of both recorded music and attendance at live performances)."

Finally, please let me know when we can expect AccuRadio's production of documents responsive to RFP No. 2.

Best regards,  
Kuru

---

**From:** [jeff.jarmuth@jarmuthlawoffices.com](mailto:jeff.jarmuth@jarmuthlawoffices.com) [mailto:[jeff.jarmuth@jarmuthlawoffices.com](mailto:jeff.jarmuth@jarmuthlawoffices.com)]  
**Sent:** Thursday, November 13, 2014 1:28 PM  
**To:** Olasa, Kuruvilla  
**Cc:** [irene.tempka@jarmuthlawoffices.com](mailto:irene.tempka@jarmuthlawoffices.com); Pomerantz, Glenn; LeMoine, Melinda; Choudhury, Anjan; Ruitberg, Lauren  
**Subject:** RE: Web IV - AccuRadio LLC's Objections and Responses to SoundExchange's First Set of Production Requests

Hi Kuru,

I had a conference with my client today to advise them that I will shortly be producing information related to the impact that AccuRadio has on "sales or licenses of music of music or on any other method of distributing music, including CDs, downloads, and interactive streaming services" as per document request No. 2 in your first set of requests for production dated October 13, 2014. However, as noted in AccuRadio's response filed on November 7th, documents and other materials related to document request No. 1 do not exist, and AccuRadio does not believe that information related to document request No. 3 (financial statements, audited or unaudited, and revenue and expense data) is germane or related in any way whatsoever to its direct testimony or to the disposition of the proceeding before the CRB.

Regards,

Jeff Jarmuth

----- Original Message -----

Subject: RE: Web IV - AccuRadio LLC's Objections and Responses to SoundExchange's First Set of Production Requests  
From: "Olasa, Kuruvilla" <[Kuruvilla.Olasa@mto.com](mailto:Kuruvilla.Olasa@mto.com)>  
Date: Thu, November 13, 2014 12:56 am  
To: "[Jeff.jarmuth@jarmuthlawoffices.com](mailto:Jeff.jarmuth@jarmuthlawoffices.com)" <[Jeff.jarmuth@jarmuthlawoffices.com](mailto:Jeff.jarmuth@jarmuthlawoffices.com)>  
Cc: "[irene.tempka@jarmuthlawoffices.com](mailto:irene.tempka@jarmuthlawoffices.com)"

<irene.tempka@jarmuthlawoffices.com>, "Pomerantz, Glenn"  
<Glenn.Pomerantz@mto.com>, "LeMoine, Melinda" <Melinda.LeMoine@mto.com>,  
"Choudhury, Anjan" <anjan.choudhury@mto.com>, "Ruitberg, Lauren"  
<lauren.ruitberg@mto.com>

Mr. Jarmuth,

I am writing to follow up on my previous e-mail regarding AccuRadio's failure to produce any documents in response to SoundExchange's First Set of Requests for Production of Documents and its decision to withhold responsive documents on the basis of confidentiality or the lack of third-party consent. We have still not received AccuRadio's document production or any explanation for AccuRadio's delay.

Please respond to this e-mail by the end of the day tomorrow (Thursday, November 13, 2014) to inform me whether, and if so when, AccuRadio intends to send us its production.

Best regards,  
Kuru Olasa

---

**From:** Olasa, Kuruville  
**Sent:** Tuesday, November 11, 2014 10:57 AM  
**To:** [Jeff.jarmuth@jarmuthlawoffices.com](mailto:Jeff.jarmuth@jarmuthlawoffices.com)  
**Cc:** 'irene.tempka@jarmuthlawoffices.com'; Pomerantz, Glenn; LeMoine, Melinda; Choudhury, Anjan; Ruitberg, Lauren  
**Subject:** RE: Web IV - AccuRadio LLC's Objections and Responses to SoundExchange's First Set of Production Requests

Mr. Jarmuth,

SoundExchange understands that AccuRadio has not produced any documents in response to SoundExchange's First Set of Requests for Production of Documents, and has, in fact, withheld production of documents on the basis of confidentiality or the lack of third-party consent. As AccuRadio knows, the Copyright Royalty Judges have issued an order directing all participants to "produce without delay any requested documents subject to confidentiality restrictions that are otherwise discoverable . . . irrespective of whether third-party consent has been requested or received by the producing party." Order Granting Services' Joint Motion to Compel at 3, Docket No. 14-CRB-0001-WR (2016-2020) (October 30, 2014).

AccuRadio's failure to adhere to the Judges' Order and to the mutually agreed upon discovery schedule has prejudiced SoundExchange, including with respect to SoundExchange's preparation of its Second Set of Requests for Production of Documents. Please promptly produce any documents responsive to SoundExchange's requests for production, including any documents being withheld on confidentiality grounds.

SoundExchange reserves all rights with respect to AccuRadio's delay in producing responsive documents.

Best regards,  
Kuru Olasa

---

**From:** [irene.tempka@jarmuthlawoffices.com](mailto:irene.tempka@jarmuthlawoffices.com) [<mailto:irene.tempka@jarmuthlawoffices.com>]  
**Sent:** Tuesday, November 11, 2014 10:16 AM

**To:** Olasa, Kuruvilla

**Cc:** [Jeff.jarmuth@jarmuthlawoffices.com](mailto:Jeff.jarmuth@jarmuthlawoffices.com); Ruitberg, Lauren

**Subject:** RE: Web IV - AccuRadio LLC's Objections and Responses to SoundExchange's First Set of Production Requests

Hi Kuru,

My understanding is that AccuRadio will be producing its pass-through music sales data from 2011 until now, but Mr. Jarmuth didn't want to send it until the third party stores had assented to its dissemination to SX. This data is related to Item No. 2 of SX's Request for Production.

Regards,

Irene

----- Original Message -----

Subject: RE: Web IV - AccuRadio LLC's Objections and Responses to SoundExchange's First Set of Production Requests

From: "Olasa, Kuruvilla" <[Kuruvilla.Olasa@mto.com](mailto:Kuruvilla.Olasa@mto.com)>

Date: Tue, November 11, 2014 7:47 am

To: "[Irene.Tempka@jarmuthlawoffices.com](mailto:Irene.Tempka@jarmuthlawoffices.com)"

<[Irene.Tempka@jarmuthlawoffices.com](mailto:Irene.Tempka@jarmuthlawoffices.com)>

Cc: "[Jeff.jarmuth@jarmuthlawoffices.com](mailto:Jeff.jarmuth@jarmuthlawoffices.com)"

<[Jeff.jarmuth@jarmuthlawoffices.com](mailto:Jeff.jarmuth@jarmuthlawoffices.com)>, "Ruitberg, Lauren"

<[lauren.ruitberg@mto.com](mailto:lauren.ruitberg@mto.com)>

Irene,

I write to follow up on the below e-mail. Please let me know as soon as possible if we are missing a document production from AccuRadio.

Best regards,  
Kuru Olasa

---

**From:** Olasa, Kuruvilla

**Sent:** Monday, November 10, 2014 2:02 PM

**To:** 'Irene.Tempka@jarmuthlawoffices.com'

**Cc:** Ruitberg, Lauren

**Subject:** Web IV - AccuRadio LLC's Objections and Responses to SoundExchange's First Set of Production Requests

Irene,

We received AccuRadio's Objections & Responses to SoundExchange's First Set of Production Requests, but it does not appear that AccuRadio produced any documents along with this response. Could you please let me know as soon as possible if we are missing a document production from AccuRadio?

Best regards,  
Kuru Olasa



Kuruville J. Olasa | Munger, Tolles & Olson LLP  
355 South Grand Avenue | Los Angeles, CA 90071  
Tel: 213.683.9530 | [Kuruville.Olasa@mto.com](mailto:Kuruville.Olasa@mto.com) | [www.mto.com](http://www.mto.com)

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## **EXHIBIT D**



NOVEMBER 25, 2014

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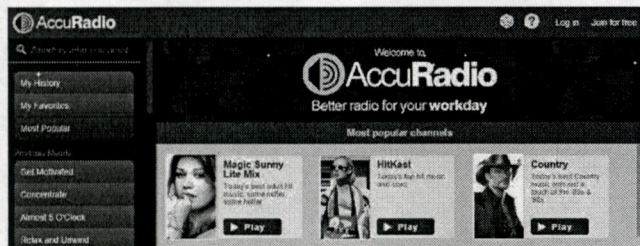
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6 (<http://rainnews.com/kurt-hansons-accuradio-raises-2-5-million-funding/#comments>)

## Kurt Hanson's AccuRadio raises \$2.5-million funding

Posted on September 5, 2014 (<http://rainnews.com/kurt-hansons-accuradio-raises-2-5-million-funding/>)  
by Brad Hill (<http://rainnews.com/author/bradhill/>)



(<http://rainnews.com/wp-content/uploads/2014/09/accuradio-spread.jpg>)

Internet radio pioneer AccuRadio announced a \$2.5-million investment from NantWorks LLC, headed by entrepreneur Dr. Patrick Soon-Shiong. AccuRadio was founded by CEO Kurt Hanson, also RAIN News Founding Editor.

Kurt Hanson began building AccuRadio in 2000. It was an experiment first, and became a hardy first-mover in what has evolved into a crowded field littered with music services that did not survive. Today's press release notes that AccuRadio operates profitably.

AccuRadio lives up to its name by programming over 1,000 stations covering a wide spectrum of genres, time periods, styles, and moods. Users can combine the exceptionally fine-tuned stations into customized listening experiences. AccuRadio has won the "People's Choice" in the Webby Awards twice, for Best Radio.

AccuRadio grew from a series of articles in RAIN News between 2000 and 2002. RAIN Editor Emeritus Paul Maloney described the emergence in a post last year: "[AccuRadio] evolved out of a series of RAIN articles in 2000 through 2002 intended to show broadcasters how they could build a multichannel, personalizable Internet radio service. Beginning with three channels of music — "Swingin' Pop Standards," "Modern Rock Classics," and "Piano Jazz."

Dr. Soon-Shiong was Fortune Magazine's 2013 Business Person of the Year. He is a South African immigrant who moved to Los Angeles 30 years ago. Soon-Shiong was recognized for a high-profile buy-out of Magic Johnson's stake in the L.S. Lakers, and he attempted to buy the Dodgers last year. Professionally, Shoon-Siong is a pioneering surgeon, researcher, and inventor of the cancer drug Abraxane.

"We're extremely excited to work with Patrick, who is one of world's brightest and most forward-thinking entrepreneurs," Kurt Hanson said. He noted that the investment will bring PR and marketing support to AccuRadio.

### OFFICIAL PRESS RELEASE:

#### ACCURADIO RAISES \$2.5 MILLION IN "SERIES A" FUNDING FROM NANTWORKS

Pioneering online radio property AccuRadio, led by CEO Kurt Hanson, COO John Gehron and EVP/Programming Paul Maloney, has raised a "Series A" round of \$2.5 million from L.A.-based NantWorks LLC, headed by successful entrepreneur Dr. Patrick Soon-Shiong.

AccuRadio is one of the world's leading brands of personalizable online radio, offering over 1,000 channels of rock, pop, classical, jazz, R&B, country, world music, Broadway, and more.

AccuRadio is unique among major brands of online radio in that it targets an upscale, educated, at-work, P35-64 demographic.



MusicMaster  
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Ex. D - 1



AccuRadio was an early entrant in the field of personalizable online radio, preceding the entrance of Pandora and I Heart Radio into the space by several years, and is an industry leader in many measures of customer satisfaction and loyalty.

AccuRadio is a two-time winner of the Webby Awards' "People's Voice" award for Best Radio. It is one of what is believed to be a very small number of profitably-operating online radio brands.

Dr. Soon-Shiong is a surgeon, scientist and entrepreneur who has built two multi-billion-dollar biotechnology firms and is currently the CEO of NantWorks, a family of companies dedicated to providing knowledge for all through the convergence of science, infrastructure and mobility to improve how we live, work and play.

"We see a great opportunity in accelerating AccuRadio's leadership position by enabling new means of engagement among music-lovers through the AccuRadio platform," Soon-Shiong said.

Hanson noted, "We're extremely excited to work with Patrick, who is one of world's brightest and most forward-thinking entrepreneurs."

"We're also delighted to finally be able to bring PR and marketing support to our product," Hanson said. "AccuRadio has industry-leading measures of customer satisfaction, including Average Time Spent Listening in Webcast Metrics and its iOS and Android app user ratings, and with the help of this funding, we believe we can really take the brand to the next level."

AccuRadio's funding round comes on the heels of Google's recent \$39 million purchase of Songza and Apple's recent \$3 billion purchase of Beats Music.

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Acquisitions & Partnerships (<http://rainnews.com/category/acquisitions-partnerships/>), Music Services (<http://rainnews.com/category/music-services/>) AccuRadio (<http://rainnews.com/tag/accuradio/>), Kurt Hanson (<http://rainnews.com/tag/kurt-hanson/>)

RAIN POLL RESULTS: IS INTERNET RADIO "REAL RADIO"? (<http://rainnews.com/rain-poll-results-is-internet-radio-real-radio/>)

IAB RELEASES FIRST DIGITAL AUDIO AD STANDARD: DAAST (> (<http://rainnews.com/iab-releases-first-digital-audio-advertising-standard-daast/>)

## 6 COMMENTS



September REPLY (/KURT-HANSONS-ACCURADIO-RAISES-2-5-MILLION-FUNDING/?REPLYTOCON=31094=RESPOND) 5, 2014 (<http://rainnews.com/kurt-hansons-accuradio-raises-2-5-million-funding/#comment-31094>) KAISENBERG

Sweet! Nice job, Kurt, Paul & Co.



September REPLY (/KURT-HANSONS-ACCURADIO-RAISES-2-5-MILLION-FUNDING/?REPLYTOCON=31099=RESPOND) 5, 2014 (<http://rainnews.com/kurt-hansons-accuradio-raises-2-5-million-funding/#comment-31099>) CARL J. AUER

Couldn't happen to a better company. Kurt has been a pioneer in explaining digital broadcasting to the Radio Industry and supporting its use by Radio Broadcasters as well as digital pure plays. I have attended many sessions at NAB and he has always been an unbiased journalist and communicator. He tells the truth. Thanks



September REPLY (/KURT-HANSONS-ACCURADIO-RAISES-2-5-MILLION-FUNDING/?REPLYTOCON=31100=RESPOND) 5, 2014 (<http://rainnews.com/kurt-hansons-accuradio-raises-2-5-million-funding/#comment-31100>) TOM MCALEVEY (<http://www.radical.fm>)

I find it cute that you called my article "intentionally provocative" (<http://rainnews.com/tom-mcalevey-pandora-spotify-could-be-profitable-today/>) (<http://rainnews.com/tom-mcalevey-pandora-spotify-could-be-profitable-today/>) and now confirm indirectly the accuracy of its main premise with this, "AccuRadio operates profitably". This publication is run by some of the few people that actually understand our branch, and helped to pioneer streaming music with AccuRadio, as well as industry coverage with RAIN.

Congratulations to Kurt & Co. on the new funding...

Stream On!

From the HotSeat, Tom McAlevey, CEO Radical.FM

Pingback: 2 Kurt Hanson's AccuRadio Raises \$2.5 Million To Take On Pandora | Planet Six String (<http://planet6string.com/2-kurt-hansons-accuradio-raises-2-5-million-to-take-on-pandora/>)

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September REPLY (/KURT-HANSONS-ACCURADIO-RAISES-2-5-MILLION-FUNDING/?REPLYTOCON=31758=RESPOND) 10, 2014 (<http://rainnews.com/kurt-hansons-accuradio-raises-2-5-million-funding/#comment-31758>) TRACY BARNES (<http://hardradio.com>)

Congrats Kurt! Catching up on news and saw your funding article. Now I'll be looking for those AccuRadio ads on TV!

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STATE OF HD RADIO: A CONVERSATION WITH BOB STRUBLE

Ex. D - 2



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
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I, the undersigned, hereby certify that on December 1, 2014, I caused a copy of **SOUNDEXCHANGE'S MOTION TO COMPEL ACCURADIO TO PRODUCE FINANCIAL DOCUMENTS** to be served via electronic mail and via first-class, postage prepaid, United States mail, to the Participants as indicated below:

### *Participants*

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